IN THE HIGH COURT OF JUDICATURE
ANDHRA PRADESH
AT HYDERABAD

THE HON'BLE MR JUSTICE NOOTY RAMAMOHANA RAO

WRIT PETITION NO :2155 of 1998

Dated: 12th June 2007.

Between:

The Depot Manager, A.P.S.R.T.C., Mancherial Depot.

..... PETITIONER

AND

Y.S.Narayana, Ex. Driver, S.O Muthiah, aged 42 years, R/o Godavari Road, Luxettipet, District Adilabad and another.

.....RESPONDENTS

THE HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO

W.P.NO.2155 OF 1998

ORAL ORDER:

This writ petition is preferred by the management of the Andhra Pradesh State Road Transport Corporation (for short 'the Corporation') calling in question the award passed by the Industrial Tribunal-cum-Labour Court, Godavarikhani in I.D.No.50 of 1994, dated 12-02-1997, which was instituted by the 1st respondent.

The 1st respondent was working as a driver with the Corporation. On 20-04-1993, he was assigned duty to drive the bus of the Corporation. It was alleged against him that he had unnecessarily detained the bus between 19-00 and 20-45 hours at Jannaram bus station. The bus was to go to Khanapoor and make night-halt there. It was alleged that when the bus had stopped at Jannaram, the crew of the bus, which included its driver and conductor went to a nearby liquor vend and consumed liquor and that one another conductor also got into the bus enroute. The conductor of the bus under the influence of liquor mis-behaved himself with a lady passenger and when his conduct has been objected to by the father and brother of the said lady passenger, there was an altercation in which the bus conductor had caused injuries to the father of the lady passenger and that when one of the coolies of the Corporation, who was also travelling in the bus, tried to intervene and stop the altercation that was taking place between the conductor and the passengers, he had also

been injured and hence, the enraged passengers have insisted the bus to be taken to the nearby police station, where a complaint has been lodged against the misbehaviour of the crew of the bus. The police have registered a case against the crew, who indulged in unleashing the crime against the passenger concerned and referred the injured passenger as well as the coolie for treatment and medical attention to the Government Hospital at Luxettipet and in those circumstances, the Depot Manager of the Corporation had initiated necessary disciplinary action against both the conductor and the driver. Ultimately, based upon the findings recorded by the Enquiry Officer, the driver and the conductor of the bus were dismissed from service. The orders passed on

19-11-1993 by the Corporation dismissing the 1st respondent driver herein from service, is the subject matter of lis in this writ petition.

The management of the Corporation has examined before the Enquiry Officer, the Assistant Controller working at Jannaram bus station and the coolie, who was working at Jannaram, who got into the bus and got injured, as witnesses.

Dealing with the second charge that the

1st respondent driver has also consumed alcoholic beverage when the bus was stopped at Jannaram, the management of the Corporation preferred to rely upon a

medical certificate issued by the Government Hospital to which the police referred both the driver and the conductor for examination. It is no doubt true that the medical certificate has disclosed that the 1st respondent-driver was also under the influence of liquor. But, unfortunately, the Medical Officer, who issued the medical certificate, has not been examined, consequently, there is no opportunity for the 1st respondent-workman to cross-examine him. This apart, the coolie, who has been examined as a witness on behalf of the management of the Corporation, has categorically deposed that the driver of the bus was not under the influence of liquor. Therefore, on the face of the material gathered during the course of enquiry, it would be clear that the 1st respondent-workman was not under the influence of alcohol. To this extent, therefore, the findings recorded by the Enquiry Officer are clearly unsustainable. There is no material based upon which the Enquiry Officer would have reached a conclusion that the 2nd charge was also proved against the 1st respondent. Therefore, the findings recorded by the Enquiry Officer, with regard to the second charge are clearly lacking any basis or material.

While dealing with the 1st charge that the 1st respondent-driver had detained the bus between 19-00 and 20-45 hours at Jannaram bus depot unauthorisedly, the most relevant and crucial information

as to whether the conductor had given clearance for the bus to commence its journey, or not, has been found missing. Similarly, the Corporation made no attempt, whatsoever, to bring on record as to the measures taken by any other official of the Corporation to secure clearance for the onward journey of the bus in question. In the absence thereof, it will not be appropriate or correct for a finding to be recorded that the bus in question has been detained by the 1st respondent-workman unauthorisedly at Jannaram. Unless clearance is received by the Driver, the onward journey could not have commenced at all.

In fact, the learned Standing Counsel for the Corporation had placed before me the report of the Enquiry Officer, with a view to sustain the findings contained therein. The Enquiry Officer had concluded the issues in the following manner:

> "CHARGE NO.1:
> xxx. The version of the driver that he denied the charge is not accepted because the bus was detained unauthorisedly and consumed alcohol at Jannaram bus station and drove the bus in an intoxicated condition, as the Medical Officer has certified that the driver was in alcoholic intoxication at the time of Medical examination. It is clear that the bus was detained unauthorisedly from 19.00 to 20.45 hrs. at Jannaram bus station on 20-4-1993 and consumed alcohol and driven the bus. Due to which the image of the corporation was torned in the eyes of the travelling public and

> caused inconvenience to the travelling public. Hence the charge levelled against the driver stands proved.
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> CHARGE NO.2:
> xxxxxxxx. The Medical certificate issued by the Medical Officer, Jannaram is clear evidence that the driver Sri Y.S.Naranaya, E.57269 was in drunken condition. It is further clear that the driver had driven the bus in an intoxicated condition and created bad picture in the eyes of the travelling public and tarnished the image of the corporation. Hence the charge levelled against the driver stands proved."

Based on these findings the order of dismissal has been passed against the respondent-workman. One cannot but observe that the findings of guilt have been drawn against the 1st respondent-workman in a most mechanical manner.

When the matter was contested before the Labour Court, entire material has been considered by the Labour Court and it had come to the conclusion that the findings recorded against the 1st respondent-workman, are hardly sustainable. Hence, the Labour Court had exercised the power available to it in terms of Section 11-A of the Industrial Disputes Act and it had passed the award ordering for reinstatement of the respondent-workman back into service with the benefit of continuity of service and attendant benefits. But, at the same time, it had balanced the interests of the employer-Corporation also

by denying 50% of the backwages to be paid to the respondent-workman. Obviously, the Labour Court found that the respondent-workman had also not exhibited a wholesome conduct required of him for securing the clearance of the bus for its onward journey. Therefore, for this minor lapse on his part, perhaps, the Labour Court felt it appropriate to deny 50% of the wages to be paid for the period he has been kept out of employment. The parameters indicated in this regard are well settled and well laid down. Therefore, the exercise of discretion, in my view, by the Labour Court, has been carried out strictly in accordance with law and it does not warrant any interference at my hands.

With this, the writ petition is, therefore, dismissed, but however, without costs.

Nooty Ramamohana Rao, J

mrk

12th June 2007.